IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO 1106 of 2005
with
CIVIL APPLICATION NO 3893 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL MANAGER (RAILWAY)

Versus

MITABEN ARJUN BHATIYA

Appearance:
1. First Appeal No. 1106 of 2005
MS MEGHA JANI for Appellant No.
MR KK SHAH for Respondent No. 1
..... for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 06/05/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Admit. Shri Shah, learned Counsel appears and waives service for the Respondents.

There are several Office objections, including the objection regarding the payment of proper and full Court fee stamp not paid by the appellant. However, Ms.Jani for the appellant states that proper court fees stamp is paid. However, she makes it clear that if proper court fees stamp is not paid then it will be paid within one week from today. On this assurance given by Ms.Jani, remaining objections, which are of minor in nature, are waived and this Appeal is disposed of after hearing Ms.Jani on merit.

Shri Arjun Bhatia was born on 8.11.1933. He was serving as Engine Driver with appellant Railways since long. On 5.10.1984 he received call to bring Valsad Ahmedabad 9 Down Locomoto from the Yard. When he was on his way to the Yard, because of stress and duress, he received massive heart-attack and died on the spot. Thus, he died while on duty and because of that his widow Meenaben and three minor children filed Workmen Compensation Case No.56 of 1987 before the Commissioner, Workmen's Compensation Case, Valsad. The same could not be heard and disposed of for several years and ultimately new number i.e. W.C.C.Application No.1 of 2004 was given and finally it was allowed by the learned Commissioner, Workmen Compensation Case, by his Judgment and order dated 9.11.2004, which is challenged in this Appeal.

Ms.Jani, learned Counsel for the appellant Railways vehemently submitted that the learned Commissioner committed grave error in allowing the Application filed by the respondent - original applicant - legal heirs of deceased Arjun Bhatiya. She submitted that deceased Arjun Bhatiya died because of the heart-attack received by him when he was not on duty. Therefore, it cannot be said that deceased died in accident while on duty. This very contention was raised by the appellant - Railways in reply to the application filed by the respondents - claimants and also orally argued before the learned Commissioner, but in our considered opinion, it was rightly rejected by the learned Commissioner. It is true that deceased died because of the heart-attack, but actually he had received the call for bringing Valsad-Ahmedabad 9 Down Locomoto from the Yard. His duty was at odd hours of mid-night at 3.05 hrs. He was in service as Engine Driver with the appellant - Railways for almost three decades. The duty of the Engine Driver is most strenuous. He has to work

day and night at odd hours also. He has to be very attentive as Engine Driver of the train because any mistake committed by him would be fatal to the lives of hundreds of passengers travelling in the train. Such type of duty is likely to cause serious heart-attack to the Engine Driver. It is not in dispute that he received call at odd hours of 3.05 in the mid-night for going to Yard for bringing Valsad-Ahmedabad 9 Down Locomoto. Thus, it is clear that he was on duty. At that time he received massive heart-attack and died there and then. In that view of the matter if the learned Commissioner has come to the conclusion that deceased died while on duty and allowed the Application of the legal heirs of deceased Arjun Bhatia then there is no question of interference by this Court in this Appeal.

Following two questions of law are framed in this Appeal :

A. Whether the Judgment passed by the Commissioner is vitiated in view of the fact that the Commissioner has held the Insurance Company liable to pay compensation in spite of the evidence on record to the effect that the Workman died on account of Heart Attach and not on account of accident arising out of land during the course of his employment ?

B. Whether the Judgment passed by the Commissioner is vitiated in view of the patently erroneous illegal conclusion of the Commissioner to the effect that the deceased suffered heart attack while going for duty and that the death resulted due to injuries arising out of and during the course of employment.

None of the questions could be said to be the question of law much less substantial question of law, which is required to be decided by us in this Appeal. The Appeal u/s.30 would lie only if there is a substantial question of law involved in the Appeal. Having carefully gone through the impugned Judgment and order passed by the learned Commissioner, we are of the considered opinion that while allowing the Application of the respondent claimant he has not committed any error either on facts or law which calls for interference by this Court in this Appeal u/s.30 of the Act. While allowing the Application the learned Commissioner has assigned cogent reasons with which we are in complete agreement. When there is no substantial question of law to be decided in this appeal then this appeal must be

dismissed.

In view of the above discussion, this Appeal fails and is hereby dismissed. However, there shall be no order as to costs. The amount deposited by the appellant, as per the order passed by the learned Commissioner, be now disbursed by the learned Commissioner to the original applicants, in accordance with law at the earliest.

Civil Application No.3893 of 2005 is disposed of as the main Appeal is dismissed. No order as to costs.

(B.J.Shethna, J.)

Date : May 06, 2005

(M. C. Patel, J.)

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